

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

106

CWP-14118-2022

Decided on : 06.07.2022

Union of India & others

... Petitioners

Versus

Charanjit Singh & another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sourabh Goel, Advocate, for the petitioners.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, by the Union of India, is to the order dated 29.11.2021 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh (for short, the 'Tribunal') wherein direction had been issued to extend the benefit of stepping-up the pay of respondent No.1.

The Tribunal had specified that the pay is only to be stepped-up and not the pay-scale and the petitioners were directed to fix the pay and release the arrears within a period of 3 months from the date of receipt of certified copy of the order. While issuing the specific direction, the Tribunal relied upon the earlier order passed in OA No.156/JK/2009 titled Ashok Kumar Vs. Union of India & others decided on 19.01.2010, which admittedly was upheld by the Coordinate Bench of this Court in CWP-12894-2010 on 23.07.2010. The grouse in the said case was also similar that one person had been appointed by way of direct recruitment who was junior to the employee therein, but on account of the Assured Career Progression Scheme, he had been given the benefit of upgradation. Therefore, it was held that his pay was liable

to be stepped-up, while placing reliance upon the judgment of the Apex Court in **Commissioner and Secretary to Govt. of Haryana and others Vs. Ram Sarup Ganda and others, 2007(2) SCT 476**. The order of the Tribunal was thus upheld by noting that there was no such provision under the ACP Scheme that the employee therein was barred from the same pay-scale as given to his counterpart and merely because he had earned 3 promotions, he cannot be denied the benefit in the shape of higher pay-scales and the stepping-up of the pay was thus upheld. The said decision was taken to the Apex Court in SLP (Civil) No.7278 of 2011 (Annexure A-3) which was also dismissed on 02.05.2011.

Counsel has tried to distinguish the said judgment on the ground that there is a specific bar while referring to Clause 8 of the ACP Rules and the office memorandum dated 09.08.1999 (Annexure A-9) of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) to submit that the Tribunal was in error in issuing the positive direction and therefore, the matter was liable to be remanded.

The argument raised, at the first blush seems to be attractive but is not liable to be accepted, in view of the fact that no such stand was taken by the petitioners before the Tribunal. We have gone through the written statement filed which has now been appended as Annexure P-2 herein. The sole stand apart from denying the step-up which was claimed from 20.06.2003 was that there was a delay on part of the employer and that the matter was a policy decision and it was awaiting consideration by

the Board/Ministry. We are of the considered opinion that since we are examining the order of the Tribunal on the basis of the pleadings and the defence taken, it would not be justifiable at this stage to direct a remand as admittedly the Union of India never made its stand clear before the Tribunal.

A perusal of the Original Application would go on to show that the grouse of respondent No.1 was that he was promoted as Inspector on 27.05.1991 and his junior, Sarajan Ahmed Shah was promoted on 20.06.2003 as Inspector and had been granted the benefit of 1st ACP w.e.f. 20.06.2003. His pay had been fixed @ Rs.7500/- whereas the applicant was getting Rs.7250/- and the anomaly was continuing as he was drawing Rs.85,100/- whereas his junior was drawing Rs.92,700/- w.e.f. 01.01.2021. The fact that he was at Sr.No.80 whereas his junior was at Sr.No.81, was also highlighted apart from 3 others who were also drawing higher pay by virtue of the same anomaly. The Tribunal also noticed that as per the defence of Union of India, decision had not been taken since the year 2018 and subsequent representation made on 19.05.2020 would also go on to show that no decision had been taken by the Board/Ministry as per the letter dated 22.10.2020. It was in such circumstances, directions had been issued for stepping-up the pay and not the pay-scale.

It was always open to the petitioners to pass a speaking order qua the benefits claimed by respondent No.1 and reject his case if it was not found as per the instructions dated 09.08.1999 (Annexure A-9) which

has now been sought to be relied upon. Needful not having been done and neither the plea having been taken before the Tribunal, we are of the considered opinion that it is not a fit case to exercise the extraordinary writ jurisdiction by this Court.

It has further been argued that the matter is pending consideration before the Apex Court also. In our considered opinion, once the specific stand had not been taken before the Tribunal and neither a decision had been taken rejecting the claim of the employee, it would not lie in the mouth of the petitioners to improve upon its stand and take a plea which it was required to do so before the Tribunal.

Accordingly, in view of the above discussion, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

July 6, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No